

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:      Interchange Distribution Limited Partnership    )  
              Ward 073, Block 037, Parcel 00001                ) Shelby County  
              Industrial Property                                        )  
              Tax Year 2006    )

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$120,800	\$479,200	\$600,000	\$240,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 20, 2007 in Memphis, Tennessee. In attendance at the hearing were registered agent Jim Schwalls and Shelby County Property Assessor's representative Sandra Scoggins.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of an approximately one acre site improved with a building containing 19,576 square feet of flex warehouse/office/showroom space constructed in 1973 located at 4114 Delp Street in Memphis, Tennessee. Subject building is divided into two separate 9,788 square foot spaces which the taxpayer refers to as suite 4227 and suite 4114.

On the relevant assessment date of January 1, 2006, suite 4227 was leased for \$4.74 per square foot pursuant to a lease which commenced on July 1, 2005 and terminates on August 30, 2008. The prior lease provides for a rental rate of \$4.24 per square foot.

Suite 4114 had previously been utilized as a switching station and rented for \$6.25 per square foot pursuant to a lease which began on July 1, 2001 and was scheduled to expire on May 31, 2011. That tenant went bankrupt and paid a lease termination fee of \$113,874. This suite has not been physically occupied since 2002 or 2003.<sup>1</sup> The taxpayer has budgeted this space assuming a rental rate of \$4.12 per square foot.

The taxpayer contended that subject property should be valued at \$440,000. In support of this position, the income approach was introduced into evidence.

The assessor contended that subject property should be valued at a minimum of \$600,000. In support of this position, the income approach and eight comparable sales were introduced into evidence. Ms. Scoggins placed primary emphasis on the comparable sales. Ms. Scoggins noted that subject property is currently appraised at \$30.65 per square foot whereas the comparables sold for a minimum of \$28.00 per square foot.

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<sup>1</sup> It is unclear if the space was vacated in 2002 or 2003.



The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$500,000 based upon the collective proof.

The administrative judge finds that both the sales comparison and income approaches should be considered when valuing subject property. As previously noted, the assessor placed primary emphasis on the sales comparison approach whereas the taxpayer relied exclusively on the income approach.

Respectfully, the administrative judge finds that the assessor's comparable sales cannot receive the weight they might otherwise receive because they were not adjusted. For example, subject property has been 50% occupied since January 1, 2004. In contrast, Mr. Schwalls' unrefuted testimony established that four of the eight comparables were 100% occupied at the time of sale.<sup>2</sup> The administrative judge finds that appropriate adjustments would invariably result in a lower value indication than the \$600,000 asserted by the assessor of property.

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<sup>2</sup> Mr. Schwalls represents one of the parties involved in the four transactions.



With respect to the income approach, the administrative judge finds that Mr. Schwalls' analysis should initially receive greatest weight. The administrative judge finds that the primary areas of disagreement between Mr. Schwalls and Ms. Scoggins concerned potential gross income and operating expenses.

The administrative judge finds that Ms. Scoggins' estimate of potential rental income was actually somewhat below Mr. Schwalls' estimate (\$84,223 vs. \$92,790). However, the administrative judge finds that Ms. Scoggins considered the \$113,784 lease termination fee as other income. The administrative judge finds that this presumably one time payment in 2002 or 2003 should not be included in an estimate of stabilized income as of January 1, 2006.<sup>3</sup>

The administrative judge finds that Mr. Schwalls' assumed operating expenses of \$17,814 which represents the owner's actual 2005 expenses net of taxes. The administrative judge simply finds no basis in the record for the \$73,414 operating expenses net of taxes assumed in the assessor's income approach.

Although the administrative judge finds that the taxpayer's income approach should receive greatest weight, the administrative judge also finds that it also cannot receive the weight it might otherwise receive. In particular, the administrative judge finds that the lack of market data, such as rent comparables, reduces the reliability of the taxpayer's income approach.

Based upon the foregoing, the administrative judge finds that the preponderance of the evidence supports adoption of a value of \$500,000 after consideration of both the income and sales comparison approaches.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$120,800	\$379,200	\$500,000	\$200,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12

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<sup>3</sup> Given the dearth of evidence concerning the lease termination fee, the administrative judge finds it most reasonable to assume that any such payment was received prior to January 1 2006 and would not be realized by a potential buyer of subject property on January 1, 2006.

of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of August, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Jim Schwalls  
Tameaka Stanton-Riley, Appeals Manager